IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

MONDAY, THE 5TH NOVEMBER 2007 / 14TH KARTHIKA 1929

WP(C).No. 29211 of 2007(C)

PETITIONER:

ABDUL SALAM.S.,
BUILDING INSPECTOR (UNDER SUSPENSION),
VARKALA MUNICIPALITY,
VARKALA.

BY ADV. SRI. S.A.RAZZAK.

RESPONDENTS:
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1. **THE SECRETARY,**
   LOCAL SELF GOVERNMENT (EU) DEPARTMENT,
   GOVT.OF KERALA, THIRUVANANTHAPURAM.

2. **THE DIRECTOR OF MUNICIPAL ADMINISTRATION**
   THIRUVANANTHAPURAM.

3. **THE SECRETARY,**
   CORPORATION OFFICE,
   THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. NANDAKUMAR FOR R1 & R2,
ADV. SRI.N.NANDAKUMARA MENON,SC,TVM CORPN., FOR R3.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/11/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.29211/2007-C:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE NOTICE DTD. 20/06/04 (SIC) TO THE BUILDER.

EXT.P.2: COPY OF THE G.O. (RT). NO. 494/2005/LSGD DTD. 08/12/2005.

EXT.P.3: COPY OF THE BUILDING PERMIT DT. 23/12/2005 ISSUED BY THE R.3.

EXT.P.4: COPY OF THE CHIEF TOWN PLANNER'S REPORT DT. 22/11/2006.

EXT.P.5: COPY OF THE 3RD RESPONDENT'S ORDER DTD. 30/07/2007.

EXT.P.6: COPY OF THE G.O. (RT). NO. 2407/07/LSGD DT. 06/09/2007.

EXT.P.7: COPY OF THE REVIEW PETITION TO R.1. DTD. 17/09/2007.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

V.GIRI, J.

W.P.(C).No.29211 of 2007 C

Dated this the 5th day of November, 2007.

JUDGMENT

The petitioner is an overseer Grade I presently working in the Varkala Municipality. He challenges Ext.P6 order of suspension issued by the Government as G.O.(Rt) No.2407/07/LSGD dated 6.9.2007, inter alia, on the ground that the order is without jurisdiction. The petitioner also has a case that the suspension of the petitioner, at this stage, when he is due to retire on 30.11.2007 is not only irregular, but also unnecessary. Petitioner has sought for review of the suspension vide Ext.P7. He has approached this court with this writ petition challenging the order of suspension itself in circumstances where he is due to retire on 30.11.2007.

2. The main thrust of the contentions raised by the learned counsel for the petitioner Sri.S.A.Razzak is that in terms of Rule 15 of the Kerala Municipal Common Service Rules, 1967 **{for short 'the Common Service Rules'}**, an employee can be suspended only by the appointing authority. Under Rule 2(a) of the Common Service Rules, an 'appointing

authority' means such authority as may be authorised by the Government to make appointments to the posts in the Common Service. Rule 10 of the Rules says that the authority competent to appoint any employee under a Local Authority shall be notified by the Government. Under Sub-Rule (2) of Rule 10, nevertheless, it shall be competent for the Government at any time to assume to themselves the power to make any appointment to a local authority and when such power is assumed by the Government, the authority authorised under Sub-rule (1) shall to such extent as may be directed by the Government cease to exercise the power. Rule 15 of the Common Service Rules empowers the appointing authority or the Commissioner, if he is not himself the appointing authority, to place an employee under suspension. Reference, at this juncture, is made to the Special Rules relating to the Engineering Subordinate Service viz., Special Rules for the Kerala Municipal Common Service (Engineering and Town Planning Service), 2001 **{for short "the Special Rules"}**. As per Rule 4 of the said Special Rules, the appointing authority for the posts under Category 1, 2 and 3 shall be the Government and the appointing authority in respect of all the

other categories of posts shall be the Director of Municipal Administration.

3. The post of Overseer Grade I is included in Category No.6 and therefore, in terms of Rule 4 of the Special Rules, it is the Director of Municipal Administration, who is the appointing authority. Petitioner, therefore, contends that going by Rule 4 of the Special Rules, read with Rule 15 of the Common Service Rules, the authority to suspend an employee like the petitioner is vested in the Director of Municipal Administration and therefore, the Government had acted without jurisdiction in assuming such powers. There is a further contention with reference to Rule 20 of the Common Service Rules, which provides that an employee may prefer an appeal against the order of suspension to the Director, if the order of suspension was issued by the Commissioner or any authority authorised by the Director and to the Government in other cases. The contention is that the suspension order passed by the Government itself is bad and consequently the order of suspension should be interfered with, as one vitiated by an illegal exercise of jurisdiction assuming that the Government had jurisdiction to pass the order.

4. Learned counsel for the petitioner also refers to **Maheswari v. Alappuzha Municipality {2003(1) K.L.T. 833}.**

5. Mr.Nandakumar, learned Senior Government Pleader contends that the Government is the appointing authority in respect of all posts in the Municipal Common Service in terms of Section 224 of the Kerala Municipalities Act, 1994 **{for short 'the Act'}**, except in relation to contingent posts in the Municipal Common Service. The Government is entitled to authorise any other officer to be the appointing authority. If the power of appointment is exercised by the Director of Municipal Administration, it is only by reason of an authority conferred on him by the Government. If the Government is the appointing authority in terms of Section 224 of the Act, the Government would also be the 'appointing authority' for the purpose of Rule 15 of the Common Service Rules. If under Rule 4 of the Special Rules, a power is conferred on the Director to appoint Overseer Grade I, it is possible that the Director would get concurrent jurisdiction, as an appointing authority in terms of Rule 15 of the Common Service Rules. But, the Government will continue to have its jurisdiction as an

appointing authority. Merely because it has authorised the Director to act as the 'appointing authority' in respect of certain posts, which are included in the Special Rules in question, the Government does not lose its jurisdiction. Mr.Nandakumar refers to the decision in O.P.No.9433/02 as confirmed in W.A.No.1276/03 and W.P.(C)No.4752/04. Reliance is also made to the decision of the Supreme Court in **Balbir Chand v. Food Corporation of India & Ors. {1997(3) SCC 370}**.

6. Learned counsel for the Corporation Mr.N.Nandakumara Menon contends that Section 224 of the the Act, seems to be a complete answer to the contentions of the petitioner, inasmuch as the plenary statute treats the Government as the appointing authority. The mere fact that the Government has thought it fit to appoint any other person as the appointing authority cannot be construed as a cessation of the Government's authority to continue as the appointing authority for the purpose Rule 15 of the Common Service Rules. “Appointing Authority” for the purpose of Rule 15 of the Rules dealing with suspension of the employee will have to mean the Government and any other officer appointed by the Government.

7. I shall now consider the question of jurisdiction raised by Mr.Razzak in this case. As noted above, the contention seems to be revolving around the term ‘appointing authority’ as used in the Municipal Common Service Rules. Under Rule 2(a) of the said Rules, ‘appointing authority’ means such authority as may be authorised by the Government to make appointments to the posts in the common service. Therefore, the Rules contemplate an 'authority' other than the Government to act as the ‘appointing authority’ to make such appointments. In my view, Section 224 of the Act, on the other hand, makes it clear that the Government is the appointing authority in respect of all posts in the Municipal Common Service Rules, except to the contingent posts. Section 224 also contemplates a situation where the Government authorises any other officer to act as the appointing authority. Thus, Rule 15 of the Common Service Rules has to be read in the context of Section 224 of the Act. Obviously, there cannot be any other mode of exercise of power. Appointing authority for the purpose of Rule 15 of the Common Service Rules shall be:

"(a) Government

(b) Any other officer authorised by the Government".

8. It can also be the Secretary for the purpose of Rule 15 of the Common Service Rules, though the secretary may not be the appointing authority for the purpose of Section 224 of the Act, unless he has been authorised in that behalf by the Government under Section 224 of the Act. In other words, the power to suspend an employee in terms of Section 224 could legitimately be exercised by the Government in terms of Section 224 read with Rule 15 of the Rules. Rule 4 of the Special Rules does not lead to any other conclusion. It merely says that the appointing authority in respect of category Nos.1, 2 and 3 shall be the Government and in respect of all other categories, it shall be the Director of Municipal Administration. No doubt, Overseer Grade I is included in category No.6 and therefore, the Director of Municipal Administration is the appointing authority for Oversee Grade I. Does it mean that the Government cannot act in relation to Overseer Grade I? In my opinion, it cannot be so. Section 224 states in clear terms that the Government is the '***appointing authority***' for all posts in the Municipal Common Service. It also vouchsafes the

power of the Government to appoint any other person as the appointing authority. Rule 4 of the Special Rules only reflects an authorization made by the Government in favour of the Director of Municipal Administration to act as the appointing authority in respect of categories 4, 5 and 6. This power is exercised under Section 222(1) of the Act. An authorisation by the Government enabling the Director of Municipal Administration to act as the appointing authority in relation to certain posts in the Special Rules will not result in the Government being denuded of its power to act as the Appointing Authority. After all, the Government is treated as the appointing authority in the plenary statute. When so read, it is clear that for the purpose of Rule 4 of the Special Rules the Government and the Director of Municipal Administration, both can act as the appointing authority. Obviously it need not be stated that the Director can exercise a power only subject to such conditions incorporated in any Rule or order authorising him to act as the appointing authority.

9. The view canvassed by Mr.Nandakumar is that the Government is the appointing authority in terms of the plenary statute and therefore, is entitled to exercise the

powers in terms of Rule 15 of the Common Service Rules is accepted by this court in W.P.(C)No.4752/04 as also in O.P.No.9433/02 and W.A.No.1276/03 arising therefrom.

10. Mr.Razzak has a further contention that assuming that the Government has power to suspend an employee, such power should not have been in view of the fact that the Government is the Appellate Authority under Rule 20 of the Common Service Rules. Significantly, the power conferred on the Government under Rule 20 of the Common Service Rules will obviously be subject to the provisions in the plenary statute whereunder the Government is the 'appointing authority'. The Government is entitled to exercise such power under any of the enabling provisions and it would include Rule 15 of the Common Service Rules. The mere fact that the Government has chosen to do so, thereby rendering a remedy by way of appeal to the affected persons ineffectual does not make the order illegal or otherwise untenable. This position has again been considered in O.P.No.9433/02 as also by the decision of the Supreme Court in **Balbir Chand v. Food Corporation of India & Ors. {1997(3) SCC 370}.** In my view, the decision relied on by Mr.Razzak viz., **Maheswari v.**

Alappuzha Municipality {2003(1) K.L.T. 833} also affirms the same position. Mr.Razzak contends that even on facts, the order of suspension warrants an interference mainly because he is impending retirement on 30.11.2007. In my view, it is not necessary for this court to embark upon an appraisal of the facts at this stage to find out whether the order of suspension was justified or not. May be, petitioner's suspension could have been avoided. But, it is up to the Government to take a decision in this regard. I do not propose to interfere with the order of suspension on an appraisal of the facts.

For all these reasons, I do not find any merit in this writ petition. Writ petition is, therefore, dismissed. But, I make it clear that this judgment will not stand in the way of the Government considering Ext.P7 and taking a decision thereon, which may preferably be made before 30.11.2007.

Sd/-

(V.GIRI)

JUDGE

sk/

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